

ASSEMBLY BILL

No. 1619

Introduced by Assembly Member Klehs

February 22, 2005

An act to amend Section 3201.5 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1619, as introduced, Klehs. Workers' compensation: alternative dispute resolution: exclusive bargaining representatives.

Existing workers' compensation law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law authorizes collective bargaining agreements between a private employer or groups of employers engaged in construction-related activities and a recognized or certified exclusive bargaining representative that establishes a dispute resolution process for workers' compensation instead of the hearing before the Workers' Compensation Appeals Board and its workers' compensation administrative law judges, or that provides for other alternative workers' compensation programs, medical providers and treatment, and safety committees.

This bill would authorize exclusive bargaining representatives, in their capacity as employers, that are currently parties to these agreements to enter into similar agreements with their employees' recognized or certified exclusive bargaining representative.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 3201.5 of the Labor Code is amended to read:

3201.5. (a) Except as provided in subdivisions (b) and (c), the Department of Industrial Relations and the courts of this state shall recognize as valid and binding any provision in a collective bargaining agreement between a private employer or groups of employers engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy-duty mechanics, surveying, and construction inspection and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:

(1) An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge pursuant to the procedures set forth in Article 1 (commencing with Section 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4, governing orders, decisions, or awards of the appeals board. The findings of fact, award, order, or decision of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation administrative law judge. Any provision for arbitration established pursuant to this section shall not be subject to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.

(2) The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.

(3) The use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the

1 exclusive source of qualified medical evaluators and agreed
2 medical evaluators under this division.

3 (4) Joint labor management safety committees.

4 (5) A light-duty, modified job or return-to-work program.

5 (6) A vocational rehabilitation or retraining program utilizing
6 an agreed list of providers of rehabilitation services that may be
7 the exclusive source of providers of rehabilitation services under
8 this division.

9 (b) (1) Nothing in this section shall allow a collective
10 bargaining agreement that diminishes the entitlement of an
11 employee to compensation payments for total or partial
12 disability, temporary disability, vocational rehabilitation, or
13 medical treatment fully paid by the employer as otherwise
14 provided in this division. The portion of any agreement that
15 violates this paragraph shall be declared null and void.

16 (2) The parties may negotiate any aspect of the delivery of
17 medical benefits and the delivery of disability compensation to
18 employees of the employer or group of employers that are
19 eligible for group health benefits and nonoccupational disability
20 benefits through their employer.

21 (c) Subdivision (a) shall apply only to the following:

22 (1) An employer developing or projecting an annual workers'
23 compensation insurance premium, in California, of two hundred
24 fifty thousand dollars (\$250,000) or more, or any employer that
25 paid an annual workers' compensation insurance premium, in
26 California, of two hundred fifty thousand dollars (\$250,000) in at
27 least one of the previous three years.

28 (2) Groups of employers engaged in a workers' compensation
29 safety group complying with Sections 11656.6 and 11656.7 of
30 the Insurance Code, and established pursuant to a joint labor
31 management safety committee or committees, that develops or
32 projects annual workers' compensation insurance premiums of
33 two million dollars (\$2,000,000) or more.

34 (3) Employers or groups of employers that are self-insured in
35 compliance with Section 3700 that would have projected annual
36 workers' compensation costs that meet the requirements of, and
37 that meet the other requirements of, paragraph (1) in the case of
38 employers, or paragraph (2) in the case of groups of employers.

39 (4) Employers covered by an owner or general contractor
40 provided wrap-up insurance policy applicable to a single

1 construction site that develops workers' compensation insurance
2 premiums of two million dollars (\$2,000,000) or more with
3 respect to those employees covered by that wrap-up insurance
4 policy.

5 *(5) Exclusive bargaining representatives, in their capacity as*
6 *employers, that are currently parties to these agreements.*

7 (d) Employers and labor representatives who meet the
8 eligibility requirements of this section shall be issued a letter by
9 the administrative director advising each employer and labor
10 representative that, based upon the review of all documents and
11 materials submitted as required by the administrative director,
12 each has met the eligibility requirements of this section.

13 (e) The premium rate for a policy of insurance issued pursuant
14 to this section shall not be subject to the requirements of Section
15 11732 or 11732.5 of the Insurance Code.

16 (f) No employer may establish or continue a program
17 established under this section until it has provided the
18 administrative director with all of the following:

19 (1) Upon its original application and whenever it is
20 renegotiated thereafter, a copy of the collective bargaining
21 agreement and the approximate number of employees who will
22 be covered thereby.

23 (2) Upon its original application and annually thereafter, a
24 valid and active license where that license is required by law as a
25 condition of doing business in the state within the industries set
26 forth in subdivision (a) of Section 3201.5.

27 (3) Upon its original application and annually thereafter, a
28 statement signed under penalty of perjury, that no action has been
29 taken by any administrative agency or court of the United States
30 to invalidate the collective bargaining agreement.

31 (4) The name, address, and telephone number of the contact
32 person of the employer.

33 (5) Any other information that the administrative director
34 deems necessary to further the purposes of this section.

35 (g) No collective bargaining representative may establish or
36 continue to participate in a program established under this section
37 unless all of the following requirements are met:

38 (1) Upon its original application and annually thereafter, it has
39 provided to the administrative director a copy of its most recent
40 LM-2 or LM-3 filing with the United States Department of

1 Labor, along with a statement, signed under penalty of perjury,
2 that the document is a true and correct copy.

3 (2) It has provided to the administrative director the name,
4 address, and telephone number of the contact person or persons
5 of the collective bargaining representative or representatives.

6 (h) Commencing July 1, 1995, and annually thereafter, the
7 Division of Workers' Compensation shall report to the Director
8 of the Department of Industrial Relations the number of
9 collective bargaining agreements received and the number of
10 employees covered by these agreements.

11 (i) By June 30, 1996, and annually thereafter, the
12 Administrative Director of the Division of Workers'
13 Compensation shall prepare and notify Members of the
14 Legislature that a report authorized by this section is available
15 upon request. The report based upon aggregate data shall include
16 the following:

17 (1) Person hours and payroll covered by agreements filed.

18 (2) The number of claims filed.

19 (3) The average cost per claim shall be reported by cost
20 components whenever practicable.

21 (4) The number of litigated claims, including the number of
22 claims submitted to mediation, the appeals board, or the court of
23 appeal.

24 (5) The number of contested claims resolved prior to
25 arbitration.

26 (6) The projected incurred costs and actual costs of claims.

27 (7) Safety history.

28 (8) The number of workers participating in vocational
29 rehabilitation.

30 (9) The number of workers participating in light-duty
31 programs.

32 The division shall have the authority to require those
33 employers and groups of employers listed in subdivision (c) to
34 provide the data listed above.

35 (j) The data obtained by the administrative director pursuant to
36 this section shall be confidential and not subject to public
37 disclosure under any law of this state. However, the Division of
38 Workers' Compensation shall create derivative works pursuant to
39 subdivisions (h) and (i) based on the collective bargaining
40 agreements and data. Those derivative works shall not be

1 confidential, but shall be public. On a monthly basis the
2 administrative director shall make available an updated list of
3 employers and unions entering into collective bargaining
4 agreements containing provisions authorized by this section.

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